IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1370 OF 2023

Juned Ahamad Jamil Shaikh,
Age: 36 years, Occu.: Business,
R/o.: 65-B, Avishkar Colony,
Chalisgaon Road, Dhule. ..Applicant

Versus

The State of Maharashtra,
Through Police Station, Chalisgaon Road,
Dhule, Dist. Dhule. ..Respondent

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Mr. Imran Khan Guftar Khan Durrani, Advocate for the Applicant.
Mrs. P. V. Diggikar, APP for Respondents-State.
Mr. A. S. Sawant and Mr. A. D. Mane, Advocate to assist the APP.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 15th SEPTEMBER, 2023.
PRONOUNCED ON : 29th SEPTEMBER, 2023.

ORDER:-

1. The applicant seeks regular bail in connection with Crime No.66/2022 registered with Chalisgaon Road Police Station, Dist. Dhule for the offence punishable under Sections 409, 406, 420, 120-B r/w 34 of the Indian Penal Code and Sections 3 and 4 of the M.P.I.D. Act as well as Sections 21, 22 and 23 of the Banning of Unregulated Deposit Schemes Act, 2019.

2. The investigation was set in motion on the basis of the information given by one Shaikh Aftab Shaikh Hussain. He states that he is resident of Chalisgaon and knows accused Juned Ahamad (present applicant) since long. The accused Juned Ahamad runs proprietory firm namely National Scrap. The

informant has business deals with the accused Juned. The profit generated out of such deals was transferred in the account of the National Scrap. In the month of February-2019, accused Juned offered profitable deal. It was assured that the investment in the National Scrap will yield 50% returns within a period of six months. Accused Juned informed that he had deal with accused Faisal Memon, Hayat Memon and Abrar Memon regarding M.S. plates and Aircraft scrap, which yields great profit.

3. It is further alleged that the informant invested Rs.10,00,000/- in the said business. The amount of Rs.10,00,000/- was transferred in the account of National Scrap. Thereafter, informant alleges that he has further invested Rs.20,00,000/- by way of cash. Similarly, other persons namely Altaf Shaikh, Sajid Haji Shah and Pathan Sufiyan Khan made investments in the National Scrap. It is further alleged that, when the informant and other investors asked for the money, accused Juned connected them with accused Faisal Memon, Hayat Memon and Abrar Memon through telephone. All the accused persons mislead them and giving false information that investment is generating expected profit. It is further alleged that, although accused persons assured to return of money with returns on investment, they failed to do so.

4. It is, therefore, alleged that the accused Juned under false pretext of exponential returns, lured the informant and others to invest huge amount in the business of National Scrap. As such, cheated the informant and others. On the basis of the aforesaid report, Crime No.66/2020 for offences punishable under Sections 409, 406, 420, 120-B r/w 34 of the Indian Penal Code and Sections 3 and 4 of the M.P.I.D. Act as well as Sections 21, 22 and

23 of the Banning of Unregulated Deposit Schemes Ordinance, 2019 came to be registered with Chalisgaon Road Police Station, Dist. Dhule.

5. The applicant has been arrested on 25.08.2022. Since then, he is behind the bar. The other accused persons are released on bail by orders of this Court or the Special Court. The prayer of the applicant for grant of bail has been rejected vide order dated 06.04.2023. Hence, the present application.

6. The learned Advocate appearing for the applicant would submit that there were business transactions between the applicant and the informant as well as other investors. The civil dispute has been given colour of criminality and false complaint has been lodged. He would submit that the bank transaction would show that the informant has transferred only Rs.10,00,000/- in the year 2018 in the bank account of National Scrap. The bank entries would shows that the informant was involved in the business of the accused and the amount of Rs.28,00,000/- has been paid to him under various transactions. The false allegations are made regarding transfer of cash amount. The false documents are created to implicate the applicant. Similarly, other investors named in the complaint are falsely claiming to have transferred huge amount by way of cash. The co-accused are already released on bail. After due investigation, charge-sheet is filed. The offence under MPID Act would not attract in the facts of the case. He would submit that the applicant is behind the bar for more than one year. Hence, he urges to release the applicant on bail.

7. Mrs. Diggikar, the learned APP and Mr. Sawant, learned Advocate and Mr. Mane, learned Advocate for the informant have strongly opposed the applicant. They would submit that during the investigation, it is revealed that the accused has lured several investors under false promise of giving exponential returns. More than 23 persons have invested total amount of Rs.4,48,05,000/-. The applicant/accused failed to give accounts of such investments. Therefore, there is sufficient material to attract the offences charged. They would further submit that the applicant/accused has executed promissory notes and bonds assuring return of the amount, however, failed to do so. The large sum has been misappropriated. The investors are cheated in the name of deposit schemes. The bank account statements confirms the transactions between the applicant and investors. Therefore, they urge to reject the bail.

8. Having considered the submissions advanced, it can be gathered that the applicant had his business in the name of National Scrap. The informant had business relations with the applicant/accused. The informant on his own volition transferred the amount of Rs.10,00,000/- by cheque in the bank account of National Scrap. Although, there is allegation that he deposited further Rs.20,00,000/- in the cash, there is no evidence of such deposits. So far as the other investors named in the FIR are concerned, except Sajid Haji Shah the others states about investments in cash. Sajid Haji Shah alleges that he has transferred the amount of Rs.20,00,000/- by way of cheque. The investigation progressed after registration of offence.

9. The applicant has been arrested on 25.08.2022. The other accused persons were also arrested. During the course of

investigation, various bank account statements and documents are collected, which includes the bank statements of investors, promissory notes, agreements etc. The statement of witnesses named in the charge-sheet, alleges about cash deposits, not supported by documentary evidence. So far as the informant is concerned, admittedly he has received returns of Rs.28,00,000/-, which is not duly explained. The certain documents are made part of the charge-sheet, which are in the nature of partnership deed between the applicant and investors. Apparently, the deposits are in pursuance of the business transactions. Whether MPID Act can be invoked in such case is doubtful. The other offence under Indian Penal Code are triable by the Magistrate. Whether such investments were received with intention to cheat or under expectation of earning profit would be the matter of trial.

10. The applicant to show his bonafide, deposited Rs.10,00,000/- with the Trial Court. The receipt of such deposit is made available on record of this Court. In view of the aforesaid circumstances, particularly when the other accused are already enlarged on bail and the applicant is languishing behind the bar for more than one year, further detention of the applicant may not be necessary. The trial is not commenced till this date. It may take its own time. In that view of the matter, case is made out for grant of bail. Hence, the following order:

ORDER

(i) Bail Application is allowed.

(ii) The applicant, Juned Ahamad Jamil Shaikh be released on bail in Crime No.66/2022 registered with Chalisgaon Road Police Station, Dist. Dhule for the offence punishable under Sections 409, 406, 420, 120-B r/w 34 of the Indian Penal Code and Sections

3 and 4 of the M.P.I.D. Act as well as Sections 21, 22 and 23 of the Banning of Unregulated Deposit Schemes Act, 2019 on furnishing P.B. and S.B. of Rs.1,00,000/- (Rs.One Lakh only) each on following condition:

a. The applicant shall not tamper with the prosecution evidence in any manner.

b. The applicant shall attend the proceedings before the Special Court on each and every effective date.

c. The applicant shall furnish the details of his residential address and contact numbers with police station and update the same time to time.

d. The applicant shall not leave the State of Maharashtra without prior intimation with itinerary to the concerned police station.

(iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Later on:

11. At this stage, the learned Advocate appearing for the complainant requests to suspend the operation of the order granting bail for a period of two weeks from today.

12. However, considering the reasons stated in the order, the prayer is rejected.

(S. G. CHAPALGAONKAR)
JUDGE